

25 September 2018

By email: Eec.sen@aph.gov.au

Dear Committee Secretariat.

Please see below the Australian Chamber's responses to questions on notice arising from

At our appearance in Fremantle on 30th August as well as some corrections to the transcript.

Questions on notice

During our appearance before the Committee Senator O'Neill queried the Australian Chamber's knowledge about the capacity to indemnify against criminal offences. It was noted that the Committee had been presented with some evidence that big companies are insuring against the risk of being charged with safety breaches in the workplace.

We noted that we do not have a formulated opinion and that the Australian Chamber is not familiar with such policies or their parameters.

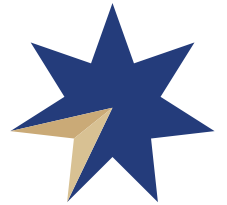
Further to this response it is worth noting that Part 2D.2, Div 1 of the *Corporations Act 2001* (Cth) applies to certain arrangements between companies and directors and officers and which restrict payment of insurance premiums and indemnities against liability in certain circumstances. Of particular note, section 199C(2) provides that '[a]nything that purports to indemnify or indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 199A or 199B'.

Section 199B(2)(c) provides that a company or related body corporate must not indemnify a person against certain liabilities incurred as a director/officer including liability owed to someone other than the company and which did not arise out of conduct in good faith. Section 199B(3) also provides that a company must not indemnify a person (directly or through an interposed company) against legal costs incurred in defending an action if the costs are incurred in defending or resisting proceedings in which the person is found to have a liability for which they couldn't be indemnified under section 199B(2) or in defending or resisting criminal proceedings in which the person is found guilty.

Whilst we have not been able to obtain details of any insurance policy indemnifying an individual against criminal offences, feedback from within our membership suggests that the capacity to obtain insurance that would purport to indemnify against criminal offences is very difficult if not impossible and issues of legality regarding the policy may arise.

We were also asked for details about how many labour-hire companies have been prosecuted for safety related offences. We are unable to advise how many labour hire companies have been prosecuted for safety failures for the following reasons:

- There is currently no national prosecutions database.
- Each WHS Regulator provides prosecution summaries online (or links too) however the level of detail varies and it is not possible to search specifically for or easily identify labour hire companies from other business types.




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We were also asked what the industry is doing to ensure that high-risk industries provide sufficient support to their members. The Australian Chamber has over 115 business associations, including state and territory chambers and industry association members. Members cover an array of industries and provide varying types and levels of services. Given the potential commercial sensitivity of collecting information on members' services, the Australian Chamber does not have records on what each and every member provides by way of services.

Although we can't provide complete details, in order to respond to the question we have been able to source some examples of the types of services provided within our membership.

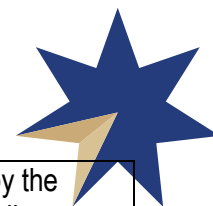




Summary of Industry Association and coverage	Industry/ sector	Free services (included in membership)	Fee for service
Approximately 40,000 members to whom both free advisory health and safety services and other health and safety services that attract a fee are provided.	Construction	Services that include health and safety content: <ul style="list-style-type: none">• over the phone advice on health and safety matters• information sheets on specific health and safety topics• regular online news• magazine articles	Health and services that attract a fee include: <ul style="list-style-type: none">• review and development of safety management systems• preparation of site specific safety plans and Safe Work Method Statements• site inspections and advice on managing risks to health and safety• checks on worker and subcontractor safety compliance• SafeScan - an online system that allows management of certain safety matters, including, hazard identification/risk assessment, site inductions, incidents• health and safety training courses (e.g., White Card, asbestos awareness, Cert IV)
Through our organisation and our Association Members throughout the network we provide a wide range of practical safety services to industry members that are designed to be small-business friendly.	Construction	Safety and health related services: <ul style="list-style-type: none">• Telephone advice and information.• Briefings and training on a range of topical health and safety issues.• Advice and information via email or 'e-alerts' for urgent matters• Safety 'Health Checks' for new members.• Regular information emails, newsletters and magazines.	<i>(Nominal charge – limited to cover costs and usually with a maximum cost ceiling):</i> <ul style="list-style-type: none">• On the ground, site-based delivery of services including:<ul style="list-style-type: none">○ Advice on safe work practices○ Site inspections○ Procedures and documents○ Work health safety management systems○ Desktop auditing○ Site auditing



		<ul style="list-style-type: none">• Divisional Information Nights to brief members when necessary or requested.• Provision of High Risk Construction Work (HRCW) SWMS templates, checklists, monitoring forms and registers to meet current WHS Legislation or client requirements.• Basic audits and site visits as requested (not always included in membership – e.g. free in some jurisdictions but a nominal charge [around \$150 for 3 hours visit] in others)• Access to subsidised training and CPD activities. <p>In addition, each Jurisdiction is usually involved in reference groups or with safety regulators, ensuring a voice for small business at the regulator table. For example, WorkSafe WA Construction Industry Safety Committee and the Western Australia Construction Safety Alliance, WorkSafe QLD Board, several EPA reference groups and steering committees for numerous Codes of Practice.</p>	<ul style="list-style-type: none">• Development of tailored site safety plans.• Specialised safety training services from WhiteCard through to industry specific audit training (heavily subsidised)• Site-safety inspections of construction workplaces to provide a written report outlining the site's major vulnerabilities, including advice on:<ul style="list-style-type: none">○ Traffic Management Plans and procedures○ Requirements for identification of and removal of asbestos○ Scaffold requirements○ Electrical compliance○ On-site consultation arrangements○ Accident and emergency response procedures○ Site inductions○ Management Systems○ High Risk Construction Work (HRCW)○ Risk Management○ Safe Work Practices• Specialised WHS and EHS systems and management system audits.
Represents many thousands of trucking businesses, ranging from owner-drivers to large fleets.	Trucking/Transport	Jointly developing a Registered Industry Code of Practice (Master Code) with the Australian Logistics Council. The master code will help deliver practical safety solutions for heavy vehicle operators and assist them to comply	Owns and operates TruckSafe, which is a not-for-profit business and risk management system to improve the safety and professionalism of trucking operators. TruckSafe members achieve accreditation through independent auditing, and



		<p>with expanded Chain of Responsibility obligations (legislation coming into effect from 1 October), by effectively managing risks. The master code is being developed with support from the Australian Government and the National Heavy Vehicle Regulator, and it will be available for free on the NHVR website.</p> <p>Produces a range of Technical Advisory Procedures. These guides are developed with input from the Industry Technical Council and provide trucking operators with advice to assist the safety of their operations. The procedures are available for free online.</p>	<p>the integrity of TruckSafe is managed by the TruckSafe Industry Accreditation Council.</p> <p>Accreditation fees apply for membership of TruckSafe.</p>
<p>The peak industry body representing the interests of the electrical and communications contracting industry across Australia. We service Electrical, Audio Visual, Security, Refrigeration/ Air Conditioning, Fire/ Emergency Detection, Solar/PV and Accredited Service Providers contractors Australia wide.</p>	<p>Electrical and communications contracting services</p>	<p>Each chapter is unique because each market is different. The NSW chapter provides our members with the following service:</p> <ul style="list-style-type: none">• 2 Hours of free WHS consultation each year (FACE TO FACE)• Access to our Free Safety Management system which includes Policies, Procedures, SWMS, Toolbox talks, Safety forms and SDS's (SafetySTAR)• Access to Legislation, regulations, codes of practice and Australian Standards on an online portal• Conduct Safety Roadshows (FACE TO FACE)• Electrical Safety technical advice	<ul style="list-style-type: none">• Other Paid Safety management systems options.• Assistance with WHS Audit / Gap Analysis• Assistance with WHS Audit support• Conducting Workplace Safety Inspections• Complete WHS Incident Investigations• WHS Committee support/management• Conduct Toolbox talks

